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No. 90-1216

IN THE

Supreme Court of the United States

OCTOBER TERM, 1990

TRANSPORTATION • COMMUNICATIONS INTERNATIONAL UNION,

Petitioner,

v.

MT PROPERTIES, INC.,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

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PETITIONER'S REPLY BRIEF

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On March 4, 1991, respondent served its brief in opposition to the petition which Transportation•Communications International Union [hereinafter, "TCU"] had filed with this Court seeking a writ of certiorari to the United States Court of Appeals for the Eighth Circuit to review the decision of that court in *MT Properties, Inc. v. Transportation•Communications International Union*, 914 F.2d 1083 (8th Cir. 1990). That responsive brief raised several arguments to which petitioners submit a reply should be made; this reply brief is respectfully submitted pursuant to Rule 15.6 of the Rules of This Court.

RESPONDENT'S ARGUMENTS AS TO WHY THIS COURT SHOULD NOT GRANT THE WRIT SUPPORT THE URGENT NEED FOR GRANTING THAT WRIT

Petitioner argued in its petition that this case presents an important question concerning the relationship between the mandatory arbitration provisions of the Railway Labor Act, 45 U.S.C. §§ 152 First and 153 First (i), and the exemption procedures provided in Section 10505 of the Interstate Commerce Act [hereinafter, "ICA"], 49 U.S.C. § 10505; and that resolution of that question directly impacts upon the viability of all private contracts between rail carriers and other parties. In reliance upon the Eighth Circuit's interpretation of this Court's decision in *Pittsburgh & Lake Erie R.R. v. RLEA*, 491 U.S. —— (1989), respondent has answered TCU's arguments by asserting that an ICA exemption supersedes both the mandatory bargaining *and* the mandatory arbitration provisions of the Railway Labor Act, and effectively nullifies existing collective bargaining agreements when a carrier voluntary elects to engage in a transaction that is exempt from regulation under the ICA.

In light of the extreme importance of the mandatory arbitration provisions of the Railway Labor Act to the maintenance of stability in the railway industry, there is an urgent need for this Court to review and to vacate the appellate court's decision so that rail carriers do not rely on *Pittsburgh & Lake Erie* to avoid their obligations under private contracts with parties that do business with rail carriers, and to unilaterally nullify their contractual obligations to rail workers.

1. In its petition, TCU argued that the appellate court's interpretation of the interrelationship between the mandatory arbitration provisions of the Railway Labor Act and Section 10505 of the ICA threatens to deprive contracting parties of contractual rights without due process of law, and without just compensation, in con-

travention of the Due Process and Just Compensation clauses of the Fifth Amendment. U.S. CONST. amend. V. Respondent has erroneously asserted in its opposition that TCU failed to raise this constitutional argument in the district court, and thus, the argument is not properly before this Court.[1] Resp. Br. at 9. Contrary to this allegation, the record demonstrates that TCU raised the Fifth Amendment argument, both before the district court and again before the court of appeals, and that both the district court and the appellate court considered that argument. *E.g.*, Pet. App. B at 30a. Thus, there is no factual impediment to this Court's consideration of this important issue.

2. In asserting that this case is controlled by this Court's "broad[]" construction of the "interaction" between the Railway Labor Act and the ICA (Resp. Br. at 6) in *Pittsburgh & Lake Erie*, respondent completely ignores the fact that this Court found that the Pittsburgh & Lake Erie's consummation of the proposed Section 10901 sale would not violate "any specific provision" of any of its collective bargaining agreements (slip op. at 10):

> The court [of appeals] did not point out how the proposed sale would require changing any specific provision of any of its collective bargaining agree-

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[1] Respondent has also mischaracterized the Interstate Commerce Commission's [hereinafter, "ICC"] disposition of the Brotherhood of Maintenance of Way Employes' [hereinafter, "BMWE"] petition for revocation of the exemption of the lease transaction from regulation under Section 10901 of the ICA, 49 U.S.C. § 10901. Resp. Br. at 3. In its decision denying BMWE's petition for revocation, the ICC found that the lease transaction did not constitute a lease between two carriers because Minnesota Commercial Railway Company [hereinafter, "MCRC"] was not a carrier *at the time the exemption petition was filed*, as it had not commenced operation of the rail services. The MCRC did, however, become a rail carrier once it commenced operation of the leased lines. The ICC never concluded, as MT Properties asserts, that MT Properties was not a carrier.

> ments. It did not suggest that any of those agreements dealt with the possibility of the sale of the company, sought to confer any rights on its employees in the event of the sale, or guaranteed that jobs would continue to be available indefinitely. What P&LE proposed to do would remove it from the railroad business and terminate its position as a railroad employer; and like the Court of Appeals, RLEA does not explain how such action would violate or require changing any of the provisions of the unions' written contracts with P&LE.

In light of this Court's finding that no contractual provision conferred any rights on Pittsburgh & Lake Erie employees in the event of a sale, this Court did not in any way intimate that existing contractual obligations were nullified whenever a rail carrier engages in a Section 10901 transaction; indeed, this Court suggested just the opposite. Slip op. at 10. In stark contrast to the factual circumstances in *Pittsburgh & Lake Erie*, the two collective bargaining agreements at issue[2] do confer rights *when* a carrier signatory to the agreements engages in the transactions that trigger the obligation to provide employees with the contracts' protective benefits. Pet. at 5. Thus, if, by virtue of the Eighth Circuit's construction of the interrelationship between the mandatory arbitration provisions of the RLA and Section 10505 of the ICA, TCU is prevented from presenting to an adjustment board the issue of whether the lease transaction is the type of transaction that gives rise to the contractual duty to pay such benefits, TCU-represented employees may be deprived of property without due process of law and without just compensation in contravention of the Fifth Amendment.

3. Respondent's emphasis on the erroneous allegation that it is no longer a carrier within the meaning of Section 1 First of the Railway Labor Act, 45 U.S.C. § 151

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[2] The Washington Job Protection Agreement of 1936 and the Stabilization Agreement of February 7, 1965.

First,[3] ignores the fact that an employer may not evade its contractual duty to arbitrate by a "change in the corporate structure or ownership of a business enterprise . . . ." *John Wiley & Sons v. Livingston* [hereinafter, "*Wiley*"], 376 U.S. 543 (1964). *See also Nolde Bros. Inc. v. Bakery Workers* [hereinafter, "*Nolde*"], 430 U.S. 243 (1977). Thus, in accordance with this Court's rationale in *Wiley* and *Nolde*, even if MT Properties were correct in asserting that by virtue of the lease transaction, it is no longer a carrier, this change does not extinguish its pre-lease contractual duty to arbitrate. Whether *Wiley* and *Nolde*, two cases which arose under the National Labor Relations Act, 29 U.S.C. § 151, *et seq.*, apply to the Railway Labor Act, presents an important issue of law which should be decided by this Court, and not, as MT Properties assumes, by its statement that those principles are inapplicable to the rail industry.

CONCLUSION

For the reasons set forth in their petition, TCU submits that the petition should be granted.

Respectfully submitted,

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[3] As explained in TCU's petition, MT Properties was a rail carrier at the time the exemption petition was filed and remains a "carrier" within the meaning of Section 1 First of the RLA, 45 U.S.C. § 151 First. Pet. at 16. *See Smith v. Hoboken R.R., Warehouse and S.S. Connecting Co.*, 328 U.S. 123, 129 (1948).